

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No. 167 to 201 of 1993

With

FIRST APPEALS No. 226 to 259 of 1993

With

FIRST APPEALS No. 838 to 870 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : YES
of the judgement?
4. Whether this case involves a substantial question : YES
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : YES

SPECIAL LAND ACQ. OFFICER

Versus

CHIMANBHAI BAJIBHAI

Appearance:

FIRST APPEALS No. 167/93 to 201/93

MR PG DESAI, GOVERNMENT PLEADER for appellant

NOTICE SERVED for Respondents-orig.claimants

MR JC SHETH for Respondent- Western Railway

FIRST APPEALS No.226/93 to 259/93 and

FIRST APPEALS No.838/93 to 870/93

MR HL JANI, AGP for appellant

NOTICE SERVED for respondents-orig.claimants

MR JC SHETH for responent-Western Railway

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE R.P.DHOLAKIA
Date of decision: 28/07/1999

ORAL COMMON JUDGEMENT

(Per : Panchal, J.)

First Appeals No.167/93 to 201/93 are filed by the Special Land Acquisition Officer, Nadiad, District : Kheda against common judgment and award dated October 1, 1990 rendered by the learned Extra Assistant Judge, Nadiad in Compensation Cases No.142/86 to 176/86. First Appeals No.226/93 to 259/93 filed by Special Land Acquisition Officer, Kheda and Executive Engineer (Construction), Western Railway,Ahmedabad as well as First Appeals No.838/93 to 870/93 filed by the original claimants are directed against common judgment and award dated March 18, 1991 rendered by the learned 2nd Joint District Judge, Nadiad in Land Acquisition Cases No. 436/87 to 468/87. First Appeals No.167/93 to 201/93 and First Appeals No.226/93 to 259/93 were admitted by the Court vide common order dated July 2, 1993. It may be mentioned that lands belonging to the claimants were acquired for the public purpose of 'Nadiad-Modasa-Kapadwanj Broad-gauge Railway. Common questions of facts and law are involved in all these appeals and, therefore, in view of the request made by the learned Counsel for the parties, we propose to dispose of all these appeals by this common judgment.

2. Facts of First Appeals No.167/93 to 201/93 :

A proposal was received by the State Government to acquire agricultural lands of village Kavath,Taluka : Kapadwanj, District : Kheda for the public purpose of 'Nadiad-Modasa-Kapadwanj Broadguage Railway'. On scrutiny of the said proposal, the State Government was satisfied that agricultural lands of village Kavath were likely to be needed for the said public purpose. Therefore, notification under section 4(1) of the Land Acquisition Act, 1894 ("Act" for short) was issued which was published in Government Gazette on July 24, 1980. After taking into consideration the report which was submitted by the Special Land Acquisition Officer, Nadiad under section 5A(2) of the Act, declaration under section 6 of the Act was made which was published in the Government Gazette on June 11, 1981. The interested persons were thereafter served with notices under section 9 of the Act for determination of compensation. The

claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 2000/- per Are, but having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated February 27, 1986 awarded Rs. 140/- per Are for irrigated lands and Rs. 100/- per Are for non-irrigated lands as compensation to the claimants. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they made applications in writing requiring the Land Acquisition Officer to refer the matters to the Court for determination of appropriate compensation. Accordingly, references were made to the District Court, Kheda at Nadiad, which were numbered as Compensation Cases No.142/86 to 176/86. In the reference applications it was pleaded that having regard to high fertility of the agricultural lands acquired and in view of overall development which had taken place near the acquired lands, the claimants should be awarded compensation at the rate of Rs. 2000/- per Are. The reference applications were contested by the Western Railway vide written statement at Exh.11 contending, inter-alia, that determination of compensation by the Special Land Acquisition Officer was just as well as adequate and, therefore, reference applications should be dismissed. Upon rival assertions of the parties, necessary issues for determination were raised by the reference Court. In order to substantiate the claim advanced in the reference applications, two witnesses were examined on behalf of the claimants, namely, Laljibhai Nathabhai at Exh.17 and authorised valuer Mr. Apabhai Fulabhai at Exh.74; whereas on behalf of the western railway, Govindbhai Somabhai, who was discharging duties as a Head Clerk in the Office of Executive Engineer, Western Railway, Ahmedabad, was examined at Exh.76. On appreciation of evidence led by the parties, the reference Court held that Special Land Acquisition Officer was not justified in placing reliance on sale pertaining to Survey No.390, as the same was not proved as required by law. The learned Judge deduced that original sale index produced at Mark 12/2/1 was also not relevant for the purpose of determining market value of the lands acquired, as sale transactions were not proved in accordance with law. After going through the previous award which was produced on behalf of the Western Railway, the reference Court concluded that the said award was neither comparable nor relevant and, therefore, was of no use in determining market value of the acquired lands. The learned Judge also held that in view of the evidence of Lavjibhai Nathabhai which was recorded at Exh.10 and the authorised valuer Mr. Apabhai Fulabhai

recorded at Exh.74, this was a fit case for determining market value of the acquired lands on yield basis. In ultimate analysis, the learned Judge by the impugned award has held that the claimants are entitled to compensation at the rate of Rs. 10.40 ps. per sq.mt. for irrigated lands and Rs. 10.00 ps. per sq.mt. for non-irrigated lands, by the impugned award giving rise to the the above-numbered appeals.

3. Facts of First Appeals No.226/93 to 259/93 and First Appeals No.838/93 to 870/93 :

A proposal was received by the State Government to acquire agricultural lands of village Thawad, Taluka : Kapadwanj, District : Kheda for the public purpose of "Nadiad-Modasa-Kapadwanj Broadguage Railway". On scrutiny of the said proposal, State Government was satisfied that agricultural lands of village Thawad were likely to be needed for the said public purpose and, therefore, notification under section 4(1) of the Act was issued which was published in Government Gazettee on February 26, 1981. After taking into consideration the report which was submitted by the Special Land Acquisition Officer under section 5A(2) of the Act, declaration under section 6 of the Act was made by the State Government, which was published in the Government Gazette on December 1, 1984. The interested persons were thereafter served with notices for determination of compensation. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 2000/- per Are, but having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated April 19, 1986 offered compensation to the claimants at the rate of Rs. 1.40 ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they made applications in writing requiring the Special Land Acquisition Officer to refer the matters to the Court for determination of appropriate compensation. Accordingly, references were made to the District Court, Kheda at Nadiad, which were numbered as Land Acquisition Cases No.436/87 to 468/87. In the reference applications it was claimed by the claimants that having regard to high fertility of the agricultural lands acquired and overall development which had taken place near the acquired lands, the claimants should be awarded compensation at the rate of Rs.2000/- per Are. The reference applications were contested by the State Government vide written statement at Exh.8. Therein, it was inter-alia contended that the Special Land Acquisition Officer had

determined the compensation after taking into consideration fertility of the lands acquired, different crops which were being raised on the lands acquired, income derived therefrom etc. and as just compensation was determined by him, reference applications should be dismissed. The Western Railway had contested the reference applications by filing written statement at Exh.10 and similar contentions as were raised in the written statement of the State Government, were raised by the Western Railway. Upon rival assertions of the parties, necessary issues for determination were raised by the reference Court. In order to substantiate the claim advanced in the reference applications, claimant Chaturbhai Ranchhodbhai was examined at Exh.68; whereas Govindbhai Somabhai, who was discharging duties as Head Clerk in the Office of Executive Engineer, Western Railway, Ahmedabad was examined at Exh.107. On appreciation of evidence led by the parties, the reference Court held that the sale instances relied on by the Western Railway were neither comparable nor relevant for the purpose of ascertaining market value of the lands acquired in this case. It was deduced that in view of the evidence led by the claimants, market value was required to be ascertained on yield basis. In ultimate analysis, the reference Court by the impugned award has held that the claimants are entitled to compensation at the rate of Rs. 6/- per sq.mt., giving rise to First Appeals No.226/93 to 259/93. According to the claimants, reference Court should have awarded more compensation to them than Rs. 6/- per sq.mt. and, therefore, they have filed First Appeals No.838/93 to 870/93 claiming enhanced compensation.

4. We may state that the remarks made by the Office in the final hearing board dated July 28, 1999 show that First Appeals No.183/93 to 189/93 were decided by Division Bench comprising B.N.Kirpal, C.J. (as he then was) and A.N.Divecha, J. on December 5, 1994. However, on verification of the records, we find that the above-numbered First Appeals are not disposed of. What was disposed of by the Division Bench, were First Appeals No.183/94 to 189/94 which were in respect of property tax. Thus, it is apparent that wrong remarks have been made on the board and First Appeals No.183/93 to 189/93 are also required to be disposed of by the Court.

5. Learned Counsel for the appellant has not challenged determination of compensation on the yield basis, but what is objected to is that in view of the settled legal position, multiplier of more than 10 could not have been adopted by the reference Court while

determining market value of the acquired lands on yield basis. We have gone through the entire record in the three groups of appeals. It is a fact that the Government has failed to adduce any evidence regarding sale instances on the basis of which market value of the lands acquired could have been ascertained. Under the circumstances, the reference Court was justified in evaluating oral evidence of the witnesses for the purpose of determining market value of the lands acquired on yield basis because the Court has statutory duty to the society to subject the oral evidence to great scrutiny and to determine appropriate market value. In view of the evidence led by the claimants, we are of the opinion that the reference Court was justified in resorting to yield method for the purpose of determining market value. We also find that the reference Court has correctly taken into consideration fertility of the lands acquired, quantity of the agricultural produces which were grown on the lands acquired as well as their prevailing market price on the relevant date. However, there is no manner of doubt that the reference Court has adopted multiplier of 12 while determining market value of the lands acquired. In view of the decision in Collector, Land Acquisition v. Ganaram Dhoba, (1996) 1 SCC 631 and other reported decisions, multiplier of more than 10 could not have been taken into consideration while determining market value of the lands acquired on yield basis. But, we find that in view of small extent of land belonging to individual claimant as is evident from the schedule to the impugned award, it becomes clear that a very small additional amount is granted by the reference Court as compensation to individual claimant while adopting multiplier of 12 in the present case. So far as First Appeals No.167/93 to 201/93 are concerned, the schedule annexed to the award shows that the largest extent of land i.e. 4800 sq.mts. is acquired only in one case and the additional amount of compensation paid to the claimant works out to be not more than Rs.2000/- if multiplier of 10 is adopted; whereas in rest of the cases, the additional amount of compensation ordered to be paid is not more than Rs.1000/- if multiplier of 10 is applied to the facts of the present case. Though the learned Counsel for the appellant is right in stating that in view of well settled principle laid down by the Supreme Court in several reported decisions, the reference Court should not have adopted multiplier of 12 while working out compensation on yield basis, but in view of smallness of the additional amount granted to each individual claimant, we are of the opinion that the award cannot be interfered with and deserves to be upheld. The additional amount of compensation paid to

individual claimant is so small that no interference of the High Court is called for in the present group of appeals. Therefore, First Appeals No. 167/93 to 201/93 are liable to be dismissed.

6. As far as First Appeals No.226/93 to 269/93 are concerned, the reference Court has given cogent reasons for the purpose of coming to the conclusion that the claimants are entitled to compensation at the rate of Rs. 6/- per sq.mt. The claimant who was a farmer had led satisfactory evidence giving details of crops grown as well as income derived therefrom. No positive evidence was led on behalf of either State Government or Western Railway to show that the evidence of farmer was incorrect. Village Form No. 7/12 produced by the farmer indicates that the claimants were taking crops of paddy, groundnut, cotton seeds etc. in the years 1981-82. It may be mentioned that acquired lands were situated in Kheda district and were highly fertile. Under the circumstances, we do not find that any error was committed by the reference Court in holding that income derived by each claimant was Rs.1200/- per Bigha. After determining the income per Bigha, reference Court has deducted 50% therefrom being cultivation expenses and has come to the conclusion that the income was Rs.600/- per Bigha i.e. Rs. 6/- per sq.mt. In this case, reference Court has not applied any multiplier at all and therefore, it is difficult to hold that determination of compensation is excessive in any manner. We find that correct principles were applied by the reference Court while determining compensation in First Appeals No.226/93 to 259/93 and no ground is made out by the appellant to interfere with the same in the said group of appeals. As far as claim for enhanced compensation as advanced by the claimants in First Appeals No.838/93 to 870/93 is concerned, we find that just compensation has been determined by the reference Court in view of the evidence led by the claimants. It is true that while determining market value of the acquired lands on yield basis, no multiplier was adopted or applied by the reference Court, but in our view, that has not vitiated determination of compensation in any manner. We may mention that when the reference Court has to determine market value of the lands acquired on yield basis, cogent and convincing evidence should be placed before the Court regarding quantity of crops raised and their prices prevailing at the relevant time. On appreciation of evidence of one claimant, it cannot be deduced that all the claimants were raising same crops and quantity of the crops raised was also the same. However, Court has statutory duty to the society to subject oral evidence to a great scrutiny

and after applying test of normal prudent man, has to determine market value of the acquired lands. Under the circumstances, though there was paucity of evidence, the reference Court has held that the claimants are entitled to compensation at the rate of Rs. 6/- per sq.mt. In our view, no ground is made out by the learned Counsel for the claimants to enhance the compensation. Therefore, First Appeals No. 838/93 to 870/93 should also fail.

For the foregoing reasons, all the above-numbered appeals fail and are dismissed, with no order as to costs.

(patel)